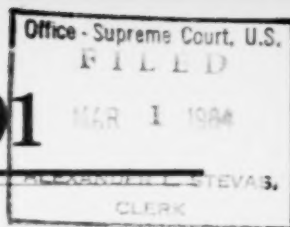


NO. 83-1091



**In the  
Supreme Court of the United States**

OCTOBER TERM, 1983

ANDRA A. CAPACI,

PETITIONER

versus

KATZ & BESTHOFF, INC.

RESPONDENT

EQUAL EMPLOYMENT  
OPPORTUNITY COMMISSION

INTERVENOR

ON PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

REPLY BRIEF OF PETITIONER

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MAY IT PLEASE THE COURT:

Relating to Question II presented for review, Petitioner submits that Respondent misunderstood the trial judge's intent when he severed Capaci's case from that of the EEOC on March 26, 1979. His language is clear and is quoted in the Petition for Writ of Certiorari at p. 16 and Respondent's Opposition at p. 15. The critical phrase which Petitioner believes Respondent misunderstood is italicized in the Opposition at p. 15 in the sentence reading:

As far as her case is concerned, though, I will disregard it until she has her lawyer and her trial is resumed and if necessary we will call back the same witnesses that we are calling now *which you [Respondent] think you may need to defend yourself in her case.*

Respondent misconceives Petitioner's position when it argues "In order to hurdle this obstacle, Petitioner now suggests that it was the Trial Judge's obligation to call these witnesses on behalf of Ms. Capaci to testify." Opposition p. 17.

Petitioner's position, simply stated, is that if the testimony of the witnesses Buras and Schnieder were to be used by the Respondent against Capaci, Respondent would have to recall them when Capaci was represented by counsel so she could face her accusers, confront them, and cross examine them.

Respondent did not recall Buras or Schnieder, yet their testimony was argued (see Petition for Writ at pp. 9-10) and considered against her (see A-84) contrary to the Trial Judge's articulated intention as to the severence. The testimony of Buras may be cumulative as Respondent argues, but the expert testimony of the Respondent's Prescription Director, Schnieder, was expert opinion from a witness of unique position and cannot be characterized as cumulative. It was unrelated to the class claim. It was directly related to Capaci's claim of retaliation and it was taken in her absence. To have conducted the trial in such a manner was an abuse of discretion.

Respectfully submitted,

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Carl J. Schumacher, Jr.  
C. David Schumacher

## CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the above and foregoing Brief this 29th day of February, 1984 by placing it in the United States Postal Service, postage prepaid, to:

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